

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

GUARDIAN ARMORED ASSETS, LLC

Employer

and

CASE 7-RC-22204

MICHIGAN ASSOCIATION OF POLICE - - 911¹

Petitioner

APPEARANCES:

Bradley T. Raymond and Michael Weissman, Attorneys, of Farmington Hills, Michigan, for the Employer.

M. Catherine Farrell, Attorney, of Bloomfield Hills, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

¹ The names of the Employer and Petitioner appear as amended at the hearing.

² The parties submitted briefs, which were carefully considered.

³ The Employer served two subpoenas duces tecum on the Petitioner seeking, *inter alia*, the names of all persons and entities who donated monies to the Petitioner in the past year and the names of all employers who were solicited to donate to the Petitioner during the same period. That information was not produced by the Petitioner and no motion to quash was filed. The Petitioner contends that the information is not in its possession because the solicitation is performed by an independent company contracted by the Petitioner for that purpose. I find that the evidence adduced on the record is sufficient for consideration of the issues raised by the Employer and the Employer has not been prejudiced by the failure to obtain full compliance with its subpoena.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

The Employer asserts that the Petitioner is not qualified under Section 9(b)(3) of the Act to represent a unit of guards because by the language of its by-laws it admits to membership employees who are not guards. The Employer also raises two issues of conflict of interest which it contends disqualifies the Petitioner from representing the petitioned-for unit: 1) Petitioner solicits and/or received donations from customers of the Employer, and; 2) Petitioner represents police officers and other law enforcement personnel who may be called upon to investigate the conduct of the petitioned-for employees. On the basis of the entire record, I find that the Petitioner does not, in fact, admit employees other than guards to membership and that no conflict of interest exists that would disqualify the Petitioner to represent the Employer's guards.

The Petitioner's by-laws provide that any individual who supports the purposes of MAP can become an associate member. There are two categories of associate member, voting and non-voting; voting associate members elect a member of the board of directors. No policies or rules have been established to limit eligibility for associate membership. The Petitioner does not have, and has not had since at least 1991, any associate members.

Section 9(b)(3) of the Act prohibits the Board from certifying any labor organization as the representative of a guard unit "if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." The Board is reluctant to disqualify a union from representing guards based on the supposition or speculation that non-guards are members. A theoretical chance that a non-guard employee could join a union is insufficient to deny certification to that union. *Elite Protection & Security Services*, 300 NLRB 832 (1990). It is not the possibility that non-guards will become members, but whether non-guards actually are members that determines whether a union is disqualified from representing a guard unit. *NLRB v. J.W. Mays, Inc.*, 675 F.2d 442 (2d Cir. 1982), enfg. 253 NLRB 717 (1980). While Section 9(b)(3) may be literally read to disqualify a petitioner that accepts any non-guards as members, the purpose of the provision is to prevent a guard union from bargaining on behalf of non-guard members. *Sentry Investigation Corp.*, 198 NLRB 1074 (1972). The Board provides for revocation of a certification if a union certified to represent guards admits non-guards to membership. Given the absence of evidence that the Petitioner has any non-guard members, I find that the Petitioner is qualified to represent a guard unit.

The Petitioner solicits and receives donations from, and sells advertising in its magazine and newsletter to, individuals and businesses, among them customers of the Employer. The solicitation of donations and sale of advertising is contracted by the Petitioner to another company, Capitol Communications. There is no evidence that the Employer has been solicited to contribute donations or purchase advertising.

In *Bausch & Lomb Optical Co.*, 108 NLRB 1555 (1954), the Board enunciated its doctrine of disabling conflict of interest. In that case, in which the union was a direct business competitor of the employer, the Board's concern was that the union might take certain action to further its business interests rather than further the interests of the unit employees. The Board noted that in a collective bargaining relationship, it is to the benefit of all the parties that the employer remain in business, but where the union is a competitor, it could derive a benefit by causing a strike or driving the employer out of business. The conflict of interest doctrine is not limited to cases where a union and employer are in the same business; a union may also be disqualified when an enterprise controlled and dominated by the union engages in business with the employer. *St. John's Hospital & Health Center*, 264 NLRB 990 (1982). In order to find that a union has a disabling conflict of interest, the Board requires a showing of a "clear and present" danger of interfering with the bargaining process. *Alanis Airport Services*, 316 NLRB 1233 (1995). The burden to prove a conflict of interest is on the employer and it is a heavy one because of the strong public policy favoring the free choice of a bargaining agent by employees. *Garrison Nursing Home*, 293 NLRB 122 (1989).

In this case, the Petitioner does not control or dominate any enterprise that competes with, or is a customer of, the Employer. The fact that the Petitioner solicits and accepts donations from customers of the Employer does not establish a "clear and present" danger that the Petitioner will sacrifice the interests of represented employees for its own financial interests. It is not clear in what way the Petitioner might alter its bargaining proposals to encourage donations from customers of the Employer. Since it is in the interest of the parties to a collective bargaining relationship that the employer remain in business, the receipt of donations from customers of the employer would not detract from that goal. In any event, the Board will not deprive employees of their right to select their collective bargaining representative based on speculation or conjecture. Accordingly, I find that no conflict of interest exists based on the Petitioner's solicitation and receipt of donations and advertising revenue from customers of the Employer.

Petitioner represents local police and law enforcement officers in communities in which the Employer conducts its business. Local municipality police are called upon on a weekly basis to investigate variances that occur in the money or other property secured by the Employer for its customers. In the course of these investigations, it is not uncommon for the Employer's guards to be questioned. The Employer's supervisors, managers and security personnel also participate in the investigations. Discipline, discharge, and/or incarceration of some of the Employer's guards have resulted from these investigations. The Employer contends that this history gives rise to a conflict of interest because the Petitioner will be called upon to represent the Employer's guards in connection with investigations conducted by its municipality police members while it may also represent the latter officers as well. The Employer also argues that the Petitioner's police officer members may therefore not utilize the full extent of their abilities to investigate a fellow union member.

As noted by the Court in *NLRB v. Children's Hospital*, 144 LRRM 2409 (6th Cir. 1993), enfg. in relevant part 302 NLRB 235 (1991), the prohibition in Section 9(b)(3) against a union admitting to membership both guards and employees other than guards was intended to alleviate not only the divided loyalties at a company plant, but the potential for divided loyalties whenever a guard is called upon to enforce the rules of his employer against any fellow union member. However, in finding that public non-guards, including police officers, are not employees under the Act, the Court explained that while such a result may frustrate the goal of Section 9(b)(3) to prevent guards from having divided loyalties between their employer and fellow union members, the Act was not written to prevent divided loyalty in the public sector. In *University of Tulsa*, 304 NLRB 773 (1991), the Board included municipal police officers who "moonlighted" as part-time guards in a guard unit despite their potential to enforce criminal laws against fellow guards in a strike situation. Representation of insurance agents and investigators, whose investigations affect the earnings and employment status of the agents, by the same union did not present a conflict of interest sufficient to limit the full freedom of employees to select a bargaining representative in *American Service Bureau*, 105 NLRB 485 (1953). I therefore find that the Petitioner is not disqualified from representing a unit of the Employer's guards because it also represents units of police and other public law enforcement officers.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer is an armored car business engaged in the transportation and receiving of cash and other valuables, the servicing and maintaining of automatic teller machines (ATMs), and the counting and controlling of currency and deposits for financial institutions and other customers. The parties stipulated to the appropriate unit of 47 full-time and regular part-time guards as defined in Section 9(b)(3) of the Act, including guards, drivers/messengers, vault employees, dispatchers, messengers/ATM balancers, ATM first line maintenance employees, and security officers employed at the Employer's facility located at 931 East Hamilton Street, Flint, Michigan, but excluding supervisors, as defined in the Act, and all other employees. The only issue to be decided is whether the Employer's three tellers are guards to be included in the unit. The Employer answers that question in the affirmative and the Petitioner takes no position. I find that the tellers are guards and included in the petitioned-for unit.

The tellers work in the cash room, a highly secured area. They count currency, separate or segregate currency, package and unpackage currency, seal and unseal bags, secure currency, and maintain inventory counts and levels. They complete the same paperwork as the vault employees included in the unit. Although there is evidence that the tellers fill in as drivers or messengers when necessary, the record is silent as to the frequency of such replacement assignments. The tellers do not wear uniforms, except for the occasions when they fill in for a field employee. They receive the same security training as the drivers and messengers, in addition to specialized training in currency handling and balancing, and are trained in the use of firearms. While they are not required to have a

concealed weapon permit and do not carry weapons, there are firearms available for their use in the cash room. There are various signaling devices, including a panic alarm, in the cash room for use by the tellers to secure help. Entry to the cash room is controlled by a man trap which is operated by the tellers. Their wage rates fall within the range of the guard employees. All employees receive the same benefits.

The tellers are involved in controlling access to the cash room. They receive and dispatch valuables belonging to customers. They possess the means, if necessary, to take action to protect the property of customers and the safety of other employees. Thus, the duties, responsibilities, and authority of the tellers are similar to those of the coin room employees in *Brinks, Inc.*, 272 NLRB 868 (1985).

5. Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time guards as defined in Section 9(b)(3) of the Act, including guards, drivers/messengers, vault employees, dispatchers, messengers/ATM balancers, ATM first line maintenance employees, tellers, and security officers employed at the Employer's facility located at 931 East Hamilton Street, Flint, Michigan, but excluding supervisors, as defined in the Act, and all other employees.

Those eligible to vote shall vote as set forth in the Direction of Election attached hereto.

Dated at Detroit, Michigan this 25th day of April, 2002.

/s/ Theodore C. Niforos
Theodore C. Niforos
Acting Regional Director
National Labor Relations Board
Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

177 3950 9000
339 7575
460 7550 4500

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

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LIST OF VOTERS⁴

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before May 2, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by May 9, 2002.

Section 103.20 of the Board's Rules concerns the posting of election notices. Your attention is directed to the attached copy of that Section.

⁴ If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.